

**BOARD OF ENVIRONMENTAL REVIEW  
AGENDA ITEM  
EXECUTIVE SUMMARY FOR ADOPTION OF RULE AMENDMENTS**

**AGENDA # III.A.1.**

**ITEM SUMMARY**

The department requests that the Board adopt as proposed the amendment of the specific water quality standards for the classifications D-2, E-2, E-5 and F-1 and to amend Department Circular WQB-7 Numeric Water Quality Standards to indicate which aquatic life standards are EPA priority pollutants and to amend the format of ARM 17.30.1006.

**LIST OF AFFECTED RULES**

ARM 17.30.502, 17.30.619, 17.30.651, 17.30.653, 17.30.656, 17.30.657, 17.30.702, 17.30.715, 17.30.1001, 17.30.1006, 17.30.1007 and WQB-7.

**AFFECTED PARTIES SUMMARY**

The proposed new rules could affect persons that will be renewing or obtaining a new MPDES permit that discharges to a water body that could be re-classified to one of the four classifications being amended. However, no waterbodies have been reclassified to D-2, E-2, E-5 or F-1 so no parties should be affected.

Because of the EPA disapproval action of portions of the four classification standards, should the Board decide not to make the recommended changes, the EPA will be forced to promulgate the necessary changes.

The proposed changes to WQB-7 will indicate which parameters with aquatic life criteria are EPA priority pollutants. No numeric changes are proposed.

The changes to ARM 17.30.1006 are format changes, there are no substantive changes proposed.

**SCOPE OF PROPOSED PROCEEDING**

The Department requests that the Board adopt the amendment of ARM 17.30.502, 17.30.619, 17.30.651, 17.30.653, 17.30.656, 17.30.657, 17.30.702, 17.30.715, 17.30.1001, 17.30.1006, 17.30.1007 and WQB-7 as proposed.

**BACKGROUND**

The department brought to the Board a proposal in early 2002 to amend the surface water classification system to include:

Two ephemeral stream classes (E-1 and E-2);

Two ditch classes (D-1 and D-2);

Three seasonal or semi-permanent lake and pond classes (E-3, E-4 and E-5); and

One low or sporadic flow class (F-1).

The department under the direction of the Board proceeded with rulemaking. The Board adopted the new classifications and standards incorporating the pertinent comments received. The rules became effective August 2003.

The US EPA has a mandatory duty to review and approve all water quality standards adopted by a state. During that review the EPA (at the national level and regional level) objected to the “level of protection” provided for aquatic life in the classes D-2, E-2, E-5 and F-1. The specific standards for those classes were disapproved. All of the classifications and the specific standards for D-1, E-1, E-3 and E-4 were approved.

Normally the EPA is required to promulgate approvable standards following a disapproval action. However the Region 8 EPA and the department have been working together to find a solution since the department made its review submission in November 2002. The proposed amendments are the result of those discussions.

#### **HEARING INFORMATION**

A public hearing was held on 16 January 2004, at 10:00 a.m., in the Room 111 of the Metcalf Building, Helena, Montana. Three interested persons made oral comments at the hearing. Responses to oral and written comments are included in the Adoption Notice. The USEPA commented in support of the proposed amendments.

#### **BOARD OPTIONS**

The Board may:

1. Modify the proposed amendments in response to comments received,
2. Adopt the amendments as proposed, or
3. Reject the amendments.

#### **DEQ RECOMMENDATION**

The Department recommends the adoption of the amendments as proposed.

#### **ENCLOSURES**

The following information is attached to this summary:

- 1) Notice of Public Hearing on Proposed Amendments
- 2) Hearing Examiner's Report
- 3) Draft Notice of Adoption